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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION**

LISA LIBERI, et al,

Plaintiffs,

vs.

ORLY TAITZ, et al,

Defendants.

CIVIL ACTION NUMBER:

8:11-cv-00485-AG (AJW)

**PLAINTIFFS MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF THEIR MOTION
FOR LEAVE TO FILE A FIRST
AMENDED COMPLAINT; and FOR
AN ORDER REQUIRING THE
PARTIES TO SEEK LEAVE OF
COURT PRIOR TO THE FILING
OF ANY MOTIONS or PAPERS**

Date of Hearing: May 31, 2011

Time of Hearing: 10:00 a.m.

Location: Courtroom 10D

**PLAINTIFFS MEMORANDUM OF POINTS and
AUTHORITIES IN SUPPORT OF THEIR MOTION**

I. INTRODUCTION

1. This is an Action based on full Diversity Jurisdiction for preliminary and permanent injunctive relief and damages for the Defendants illegal conduct, which includes Invasion of Privacy; Invasion of Plaintiffs Solitude; Publication of Private Facts; Placing Plaintiffs in a False Light; Cyber-Stalking; Cyber-Harassment; Cyber-Bullying; Slander; Libel; Defamation; Intentional Infliction of Emotional Distress; Violations of *Cal. Civ. Code* 1798.53 and 1798.85; and now Malicious Prosecution and Abuse of Process. Plaintiffs have been severely damaged as a result of Defendants egregious, malicious conduct.

**II. LEAVE SHOULD BE GRANTED ALLOWING PLAINTIFFS
TO AMEND THEIR COMPLAINT**

A. Leave is Freely Granted.

2. Federal Rule of Civil Procedure 15(a)(2) allows the Court to Grant Leave to Plaintiffs allowing Plaintiffs to file a First Amended Complaint. As this Court is aware, the Court should freely give Leave to Plaintiffs to file a First Amended Complaint when justice so requires. *See Fed. R. Civ. P.* 15(a)(2). The United States Supreme Court, the Ninth Circuit, and this Court have repeatedly reaffirmed that leave to amend is to be granted with "extreme liberality." *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987) (citation omitted);

1 *See, e.g., Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 230 (1962) (leave to
2 amend should be freely given); *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d
3 1048, 1052 (9th Cir. 2003) ("Absent prejudice, or a strong showing of any of the
4 remaining *Foman* factors, there exists a *presumption* under Rule 15(a) in favor of
5 granting leave to amend.") (emphasis in original); *United States v. Webb*, 655 F.2d
6 977, 979 (9th Cir. 1981) (courts should be guided by policy favoring decisions on
7 the merits "rather than on the pleadings or technicalities"); *See also* Moore, 3-15
8 *Moore's Federal Practice - Civil* § 15.14 ("A liberal, pro-amendment ethos
9 dominates the intent and judicial construction of Rule 15(a)."). The primary
10 factors relied upon by the Supreme Court and the Ninth Circuit in denying a
11 motion for leave to amend are "bad faith, undue delay, prejudice to the opposing
12 party, and futility of amendment." *DCD Programs*, 833 F.2d at 186. None of these
13 factors are present here.

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19 **B. Amendment Should Be Permitted**

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22 3. Plaintiffs originally filed suit on May 4, 2009 in the U.S. District
23 Court, Eastern District of Pennsylvania. Defendants moved to have the case
24 transferred to this District, which Plaintiffs conceded to and filed their own Motion
25 for the transfer. The case has since been transferred to this Court, where all the
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1 Defendants are located. None of the Plaintiffs reside in the State of California.

2 Therefore, Plaintiffs Complaint is not compliant with the California laws.

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4 4. Moreover, Plaintiffs now have the names of other Defendants and
5 therefore must amend to replace Doe Defendants with the names of the actual
6 parties. Further, new causes of action have arisen, in particular Malicious
7 Prosecution and Abuse of Process by Defendant Orly Taitz filing of an Emergency
8 Motion for the Revocation of Probation against Liberi, based on false and
9 manufactured allegations and accusations. At all times, Taitz was fully aware her
10 allegations and accusations against Liberi were false. Taitz filed her Motion on
11 March 8, 2011 with the San Bernardino County Superior Court, Rancho
12 Cucamonga Division in Case FWV-028000. Therefore, Plaintiffs must Amend
13 their Complaint to include these causes of Action.
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18 5. In addition, on April 25, 2011, Taitz has filed another Motion to
19 Dismiss this Case pursuant to Anti-SLAPP and Fed. R. Civ. P. 12(b)(1) and
20 12(b)(6). This Hearing date has been set for May 23, 2011 before this Court.
21 Although Taitz has filed a previous Anti SLAPP Motion and numerous Rule 12
22 Motions, which have all been litigated and adjudicated, even though the repeated
23 filing are inappropriate and incompliant with the *Fed. R. of Civ. P.* Moreover, the
24 Scheduling Conference has been set in this Case for June 6, 2011.
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1 6. On April 28, 2011, the Court entered a notice of deficiency as to Orly
2 Taitz's filing on April 25, 2011. Taitz continually refuses to follow this Court's
3 Rules and the *Fed. R. of Civ. P.* Taitz Motion was over the length allowed; Taitz
4 single spaced paragraphs in her Motion to utilize less paper, instead of the required
5 double space pursuant to the rules; Taitz did **not** give enough notice of the hearing;
6 and Taitz failed to number her paragraphs. Taitz will continue filing, setting
7 hearings, which is a waste of judicial resource and extremely prejudicial to the
8 Plaintiffs, as Plaintiffs will **not** be able to afford to continue their litigation, thereby
9 being deprived of their right to cost efficient litigation and redress.
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11 7. As this Court is aware, the filing of an Amended Complaint moots
12 any pending Motions to Dismiss, including Anti-SLAPP Motions. There is **no**
13 reason to have a Hearing on May 23, 2011 and another hearing on May 31, 2011, a
14 week apart, if this Court is inclined to grant Plaintiffs Motion and allow them to
15 file their First Amended Complaint. Further, there would be **no** need for the
16 Plaintiffs to Respond to Defendant Taitz's Motion to Dismiss and/or Anti-SLAPP
17 Motion as it will be deemed moot. Not that Mr. Berg minds appearing before Your
18 Honor, there is simply **no** reason to have Mr. Berg fly in every week, when it is
19 more cost efficient to have Plaintiffs Motion for Leave to Amend their Complaint
20 heard on the 9th of May at the same time as Defendants Motion, if the Court feels a
21 Hearing is necessary.
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1 8. Not only are Plaintiffs required to file a Response to Taitz April 25,
2 2011 filing, the travel expenses alone are extremely expensive and it takes Counsel
3 away from his Office for several days at a time for a Hearing on Defendant Taitz's
4 Motion to Dismiss, which will be deemed moot, once Leave is Granted for
5 Plaintiffs to file their First Amended Complaint. Further, Plaintiffs cannot afford
6 to pay for constant California trips. There is **no** question in the Plaintiffs minds
7 that once Plaintiffs are Granted Leave to File, and actually file their First Amended
8 Complaint, Defendant Taitz will bring forth yet another Motion to Dismiss, which
9 will require another Hearing.
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12 9. Amendment should be permitted here because this case is at an early
13 stage, Plaintiffs are acting in good faith and have **not** delayed in seeking the
14 amendment, and Defendants will **not** be prejudiced by allowing Plaintiffs to
15 Amend. However, if Plaintiffs are denied they will be severely prejudiced.
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18 10. For the reasons stated herein, Plaintiffs respectfully request this Court
19 to Grant their Motion and allow them to file their First Amended Complaint within
20 twenty-one [21] days of the Court's Order.
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24 **II. IT IS IMPERATIVE THAT THIS COURT ISSUE AN ORDER**
25 **THAT PARTIES MUST SEEK LEAVE PRIOR TO FILING**
26 **ANY MOTIONS**

27 11. As for Plaintiffs Request for an Order that all parties are to seek Leave
28 of Court prior to the filing of any Motions, as this Court can see from the Docket

1 Defendant Taitz has a bad habit of filing Motions after Motions after Motions
2 which do **not** have any Merit. Plaintiffs are then forced to respond to the filings,
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4 so they do **not** waive their rights or so the Court does **not** think Plaintiffs are in
5 agreement with the Defendants filings. This is proven by the fact Taitz has filed
6 two [2] Motions in the short time this case has been assigned to this Court. Taitz
7 Motion to Dismiss pursuant to Anti-SLAPP; and Fed. R. Civ. P. 12(b)(1) and
8 12(b)(6) are repeated Motions as stated above and Taitz filed this one after
9 Plaintiffs filed saying they would be seeking Leave to Amend their Complaint.
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12 12. Judge Robreno of the U.S. District Court, Eastern District of PA, the
13 Court this case was transferred from, issued upon the Court's own initiative, an
14 Order that all parties must seek Leave of Court prior to the filing of any Motions.
15 As you can see from the Docket, Defendant Taitz failed to comply with the Order,
16 although it did slow her down.
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19 13. The repeated filings of documents will continue if this Court does **not**
20 issue an Order requiring Leave of Court prior to the filing of any Motions. Just as
21 the Court has seen in the other case Taitz was involved in, Lincoln v. Daylight
22 Chemical, et al, Case No. 8:10-cv-01573-AG (PLAx). Further, as long as Taitz
23 gets away with her tactics, the more she will do it to ensure she costs Plaintiffs so
24 much money they will **not** be able to afford to continue the litigation against her.
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26 As the Court is aware, *Fed. R. Civ. P.* 1 states that these rules are to secure the
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1 “just, speedy, and inexpensive determination of every action and proceeding.”

2 And, this Court has the inherent power to issue any Orders necessary to ensure

3 “just, speedy, and inexpensive determination of every action and proceeding”.

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5 14. For the reasons stated herein, Plaintiffs respectfully request this Court
6 to Grant an Order that all parties must seek Leave of Court prior to the filing of any
7 Motions or papers.
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9 **III. CONCLUSION**

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11 15. For the reasons outlined herein, Plaintiffs respectfully request this
12 Court to Grant their Motion and allow them to file their First Amended Complaint
13 within twenty-one [21] days of the Court’s Order. Further, Plaintiffs respectfully
14 request this Court to Grant their request and Order that **no** Motions are to be filed
15 by any Party without Leave of Court.
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18 Respectfully submitted,

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20 Dated: April 29, 2011

/s/ Philip J. Berg

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1 Dated: April 29, 2011

/s/ Lisa Ostella

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6 Dated: April 29, 2011

/s/ Lisa Liberi

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